In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-68

HARLAN LANE, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Eastern District of Arkansas, petitioner, then Chairman of the Board of Directors of the federally insured Union National Bank of Little Rock, was convicted of having violated 18 U.S.C. 215 by having stipulated for the payment of a commission of $125,000 in exchange for the procuring of a

$1,000,000 loan by the bank to Wheel-Air, Inc. The commission was to be paid by Wheel-Air to La-Co., Inc., a corporation of which petitioner was Chairman of the Board of Directors and the controlling stockholder. Petitioner was sentenced to six months' imprisonment and a fine of $5,000. The court of appeals affirmed (Pet. Ex. A).

The opinion below answers petitioner's contention that the statute does not apply to stipulations for fees not to be paid personally to a bank officer (Pet. 10-11) and we rely on that opinion. We point out specifically, however, that petitioner's reliance on *Ryan* v. *United States*, 278 F. 2d 836 (C.A. 9), is misplaced. In *Ryan* the court of appeals sustained a conviction for violation of Section 215 against a challenge that it could not be applied to fees, commissions or gifts received *after* the loan was made. *Ryan* did not deal with the question whether the bank official must receive the commission personally to violate the Section. The purpose and language of the statute are clear and cover petitioner's misconduct.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

AUGUST 1972.

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